

ASSEMBLY BILL

No. 592

Introduced by Assembly Member Fox

February 20, 2013

An act to amend Section 1170.17 of the Penal Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 592, as introduced, Fox. Sentencing: juveniles.

Existing law authorizes the prosecution and punishment of an individual under 18 years of age as an adult for a criminal offense under specified circumstances upon a finding that the individual is not a fit and proper subject to be dealt with under the juvenile court law. Existing statutory language provides that, except as otherwise provided, an individual prosecuted under this provision must be sentenced under the juvenile court law unless the district attorney demonstrates by a preponderance of the evidence, that the individual is not a fit and proper subject to be dealt with under the juvenile court law as specified.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1170.17 of the Penal Code is amended
- 2 to read:
- 3 1170.17. (a) ~~When a person~~ *an individual* is prosecuted for a
- 4 criminal offense committed while he or she was under the age of

1 18 years and the prosecution is lawfully initiated in a court of
2 criminal jurisdiction without a prior finding that the ~~person~~
3 *individual* is not a fit and proper subject to be dealt with under the
4 juvenile court law, upon subsequent conviction for any criminal
5 offense, the ~~person~~ *individual* shall be subject to the same sentence
6 as an adult convicted of the identical offense, in accordance with
7 the provisions set forth in subdivision (a) of Section 1170.19,
8 except under the circumstances described in subdivision (b) or (c).

9 (b) Where the conviction is for the type of offense which, in
10 combination with the ~~person's~~ *individual's* age at the time the
11 offense was committed, makes the ~~person~~ *individual* eligible for
12 transfer to a court of criminal jurisdiction, pursuant to a rebuttable
13 presumption that the ~~person~~ *individual* is not a fit and proper
14 subject to be dealt with under the juvenile court law, and the
15 prosecution for the offense could not lawfully be initiated in a
16 court of criminal jurisdiction, then either of the following shall
17 apply:

18 (1) The ~~person~~ *individual* shall be subject to the same sentence
19 as an adult convicted of the identical offense in accordance with
20 the provisions set forth in subdivision (a) of Section 1170.19,
21 unless the ~~person~~ *individual* prevails upon a motion brought
22 pursuant to paragraph (2).

23 (2) Upon a motion brought by the ~~person~~, *individual*, the court
24 shall order the probation department to prepare a written social
25 study and recommendation concerning the ~~person's~~ *individual's*
26 fitness to be dealt with under the juvenile court law and the court
27 shall either conduct a fitness hearing or suspend proceedings and
28 remand the matter to the juvenile court to prepare a social study
29 and make a determination of fitness. The ~~person~~ *individual* shall
30 receive a disposition under the juvenile court law only if the ~~person~~
31 *individual* demonstrates, by a preponderance of the evidence, that
32 he or she is a fit and proper subject to be dealt with under the
33 juvenile court law, based upon each of the following five criteria:

34 (A) The degree of criminal sophistication exhibited by the
35 ~~person~~ *individual*.

36 (B) Whether the ~~person~~ *individual* can be rehabilitated prior to
37 the expiration of the juvenile court's jurisdiction.

38 (C) The ~~person's~~ *individual's* previous delinquent history.

39 (D) Success of previous attempts by the juvenile court to
40 rehabilitate the ~~person~~ *individual*.

1 (E) The circumstances and gravity of the offense for which the
2 ~~person~~ *individual* has been convicted.

3 If the court conducting the fitness hearing finds that the ~~person~~
4 *individual* is not a fit and proper subject for juvenile court
5 jurisdiction, then the ~~person~~ *individual* shall be sentenced by the
6 court where he or she was convicted, in accordance with the
7 provisions of paragraph (1). If the court conducting the hearing
8 on fitness finds that the ~~person~~ *individual* is a fit and proper subject
9 for juvenile court jurisdiction, then the ~~person~~ *individual* shall be
10 subject to a disposition in accordance with the provisions of
11 subdivision (b) of Section 1170.19.

12 (c) Where the conviction is for the type of offense which, in
13 combination with the ~~person's~~ *individual's* age at the time the
14 offense was committed, makes the ~~person~~ *individual* eligible for
15 transfer to a court of criminal jurisdiction, pursuant to a rebuttable
16 presumption that the ~~person~~ *individual* is a fit and proper subject
17 to be dealt with under the juvenile court law, then the ~~person~~
18 *individual* shall be sentenced as follows:

19 (1) The ~~person~~ *individual* shall be subject to a disposition under
20 the juvenile court law, in accordance with the provisions of
21 subdivision (b) of Section 1170.19, unless the district attorney
22 prevails upon a motion, as described in paragraph (2).

23 (2) Upon a motion brought by the district attorney, the court
24 shall order the probation department to prepare a written social
25 study and recommendation concerning whether the ~~person~~
26 *individual* is a fit and proper subject to be dealt with under the
27 juvenile court law. The court shall either conduct a fitness hearing
28 or suspend proceedings and remand the matter to the juvenile court
29 for a determination of fitness. The ~~person~~ *individual* shall be
30 subject to a juvenile disposition under the juvenile court law unless
31 the district attorney demonstrates, by a preponderance of the
32 evidence, that the ~~person~~ *individual* is not a fit and proper subject
33 to be dealt with under the juvenile court law, based upon the five
34 criteria set forth in paragraph (2) of subdivision (b). If the ~~person~~
35 *individual* is found to be not a fit and proper subject to be dealt
36 with under the juvenile court law, then the ~~person~~ *individual* shall
37 be sentenced in the court where he or she was convicted, in
38 accordance with the provisions set forth in subdivision (a) of
39 Section 1170.19. If the ~~person~~ *individual* is found to be a fit and
40 proper subject to be dealt with under the juvenile court law, the

1 ~~person~~ *individual* shall be subject to a disposition, in accordance
2 with the provisions of subdivision (b) of Section 1170.19.
3 (d) Where the conviction is for the type of offense which, in
4 combination with the ~~person's~~ *individual's* age, does not make the
5 ~~person~~ *individual* eligible for transfer to a court of criminal
6 jurisdiction, the ~~person~~ *individual* shall be subject to a disposition
7 in accordance with the provisions of subdivision (b) of Section
8 1170.19.

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